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April 2, 2001

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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VIA HAND DELIVERY

Magalie Roman Salas, Esq.  
Secretary  
Federal Communications Commission  
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Washington, D.C. 20554

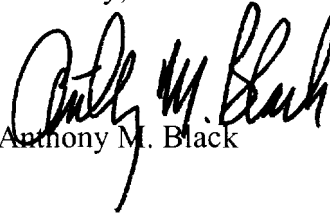
Re: *Ex Parte* Letter of McLeodUSA Telecommunications Services, Inc.  
(CC Docket 98-141 / ASD 01-17)

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding are an original and four (4) copies of an *ex parte* letter submitted by McLeodUSA Telecommunications Services, Inc.

I would appreciate your date-stamping the enclosed extra copy of this filing and returning it to me, in the enclosed envelope, via the courier who has been instructed to wait for it.

Sincerely,

  
Anthony M. Black

AMB/kas  
enclosure

cc: Mark Stone (FCC)  
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April 2, 2001

## **VIA HAND DELIVERY**

Magalie R. Salas, Esq.  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

Re: ***Ex Parte***  
CC Docket No. 98-141  
ASD File No. 01-17

Dear Ms. Salas:

In this letter, McLeodUSA Telecommunications Services, Inc. ("McLeodUSA") responds to the reply comments filed by SBC Communications Inc. ("SBC").<sup>1</sup> For the reasons stated below, the Commission should reject SBC's arguments and disaggregate CIA Centrex in the manner proposed by McLeodUSA in its initial comments. In the alternative, if the Commission is not inclined to disaggregate CIA Centrex in the manner proposed by McLeodUSA, then the Commission should defer any disaggregation of CIA Centrex until the parties have completed their pending review of the interim state-level disaggregation measures.

### **A. The Commission Should Disaggregate CIA Centrex in the Neutral Manner Proposed by McLeodUSA and Reject SBC's Selective Approach**

In its initial comments, McLeodUSA recommended that the Commission disaggregate CIA Centrex with respect to the same performance requirements that SBC already agreed to disaggregate at the state level.<sup>2</sup> Since SBC has already agreed to such disaggregation at the state level, there should be no dispute that CIA Centrex should be disaggregated in a similar manner at the federal level to ensure fair, accurate reporting results and payments pursuant to the

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<sup>1</sup> Reply Comments of SBC Communications Inc., CC Docket No. 98-141, ASD No. 01-17, filed March 15, 2001 ("SBC Reply Comments").

<sup>2</sup> SBC agreed to disaggregate CIA Centrex for purposes of Percent Firm Order Confirmations ("FOCs") Returned Within "X" Hours (Illinois PM 5, which compares to FCC PM 1); Average Time to Return FOC (Illinois PM 6, for which there is currently no comparable FCC Performance Measure); Mean Installation Interval – POTS (Illinois PM 27, which compares to FCC PM 6a); Percent Installations Completed within "X" Business Days (Illinois PM 28, comparable to FCC PM 6c which currently applies only to UNEs).

SBC/Ameritech merger conditions. SBC, however, selected only one of the state-level performance requirements for disaggregation at the federal level (FCC PM 6a). While SBC may have determined that disaggregating only FCC PM 6a produces the most favorable reporting results from SBC's perspective, the Commission should reject this approach for the reasons stated below.

SBC argues that its selective proposal is acceptable because the three performance requirements that it chooses not to disaggregate at the federal level are disaggregated at the state level.<sup>3</sup> The flaw in this argument is apparent from the fact that SBC requests disaggregation with respect to FCC PM 6a, which SBC acknowledges is also disaggregated at the state level. If state level disaggregation by itself is sufficient, as SBC argues, then there should be no reason for SBC to request disaggregation with respect to FCC PM 6a. Obviously, SBC has determined that *some* disaggregation is needed at the federal level, but only with respect to the single performance requirement that it has selected.

Disaggregation at the federal level is particularly appropriate with respect to the additional requirement, FCC PM 1 (Percent FOCs Returned Within "X" Hours), which SBC concedes "corresponds closely" to Illinois PM 5.<sup>4</sup> In the competitive market for Centrex services, competing carriers such as McLeodUSA must provide customers with prompt installation estimates based upon the FOC provided by SBC. In fact, in adopting FCC PM 1, the Commission recognized that this performance requirement is among those that "may have a direct and immediate impact upon a CLEC's end user customer."<sup>5</sup> SBC's reported performance results therefore should accurately reflect any disparate provision of FOCs for CIA Centrex, especially since there is no dispute that FCC PM 1 corresponds to the state level requirement that SBC has agreed to disaggregate.

SBC also argues that it is unnecessary to disaggregate CIA Centrex with respect to the remaining two performance requirements that SBC agreed to disaggregate at the state level (Percent Installation Completed Within "X" Business Days and Average Time to Return FOC).<sup>6</sup> Although implementing disaggregation with respect to these performance requirements is not as straightforward as in the case of FCC PM 1, the Commission should not decline to do so merely

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<sup>3</sup> SBC Reply Comments at 3.

<sup>4</sup> SBC Reply Comments at 4.

<sup>5</sup> Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules, CC Docket 98-141, Memorandum Opinion and Order, FCC 99-279 (rel. Oct. 8, 1999) ("*Merger Order*"), Appendix C, Attachment A at A-2.

<sup>6</sup> SBC Reply Comments at 4.

because these performance requirements do not perfectly match an existing federal performance requirement. This is particularly true of FCC Measurement 6c (Percent Installation Completed Within "X" Business Days), which corresponds to Illinois PM 28 but simply needs to be expanded to include CIA Centrex. The Merger Order specifically contemplates that measurements may be added, deleted, or modified pursuant to the six-month review process from which SBC's disaggregation request arose.<sup>7</sup> Having proposed to disaggregate CIA Centrex as part of the six-month review process, SBC should not be heard to complain about modifications necessary to achieve the full scope of disaggregation that SBC has already agreed is appropriate at the state level.

**B. The Commission Should Adopt the Intervals Recommended by McLeodUSA for FCC PM 6a**

**1. SBC Has Not Met Its Burden to Show That Its Proposed Interval for Non-Field Work Orders Is Appropriate**

SBC claims that, because a four-day interval for non-field work orders was adopted at the state level, McLeodUSA bears the burden to show that a different interval should be adopted at the federal level.<sup>8</sup> As McLeodUSA explained in detail, however, the four-day interval for non-field work orders was included among various performance requirements that were adopted on an *interim basis* pending further review which has not yet occurred.<sup>9</sup> McLeodUSA's review of SBC's state-level performance data for the period since July 2000 indicates a substantial discrepancy between the time required for non-field work business POTs installations as compared to the time required for non-field work CIA Centrex installations. McLeodUSA believes that this discrepancy is largely the result of SBC's use of manual processes for CIA Centrex installations and its failure to implement mechanized flow-through capabilities as requested by McLeodUSA. Incorporating the interim state-level interval of four business days into the federal performance requirements at this point in time would reward SBC for its inefficient performance and would perpetuate SBC's use of manual processes.

For the above reasons, McLeodUSA intends to seek modification of the interim four business day interval at the state level pursuant to the state-level review process that is to occur shortly. In fact, the Wisconsin Public Service Commission has initiated collaborative discussions beginning in April 2001 to address, among other issues, the need for SBC to implement mechanized flow-through capabilities for CIA Centrex installations. In the ongoing

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<sup>7</sup> Merger Order, Appendix C, Attachment A at A-2.

<sup>8</sup> SBC Reply Comments at 6.

<sup>9</sup> Comments of McLeodUSA Telecommunications Services, Inc., CC Docket No. 98-141, ASD No. 01-17, filed March 8, 2001 ("McLeodUSA Initial Comments") at 7-8.

review process, SBC and McLeodUSA may reach agreement on an appropriate interval going forward. Any such agreed interval will likely be incorporated into the performance requirements in the remaining Ameritech states.

In the meantime, however, the fact that the parties previously agreed to an interim state-level interval does not absolve SBC of its obligation, as the proponent of changes in the federal performance requirements, to demonstrate to the Commission that its proposed interval is appropriate. SBC has provided no such demonstration. Accordingly, McLeodUSA recommends the Commission adopt a three-day interval for non-field work orders. If necessary, the Commission could adopt this interval on an interim basis pending the parties' review of the interim state-level interval.<sup>10</sup>

## **2. The Commission Should Reject SBC's Proposed Dual Parity/Benchmark Standards for Field Work and Non-Field Work Orders**

In its initial comments, McLeodUSA recommended that the Commission adopt three- and four-day intervals for non-field work and field work orders, respectively, under FCC PM 6a, rather than adopt SBC's proposed dual standards of four business days for non-field work orders and parity for field work orders.<sup>11</sup> SBC contends that its proposed dual-standard regime is appropriate because the process for non-field work CIA Centrex orders differs from the process used to complete other non-field work orders whereas "field-work CIA Centrex installations are analogous to retail centrex services – both types of installations entail essentially the same central office and field work."<sup>12</sup> SBC's proffered explanation, however, is inconsistent with the principal reason SBC gave for requesting disaggregation of CIA Centrex in the first instance:

[T]he CIA Centrex service currently being provided to McLeodUSA requires Ameritech to disconnect the existing POTS service and move the end user customer's telephone number to the McLeodUSA Centrex common block established in the serving central office. This change triggers the assignment of a new class of service and new Uniform Service Order Codes (USOCs). In addition to the physical work required in the central office, adding the end user's telephone number into the Centrex common block requires central office

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<sup>10</sup> SBC also suggests that the Commission should adopt SBC's proposed four-day interval for non-field work orders and require McLeodUSA to pursue a change to that interval in a collaborative proceeding in Texas. SBC Reply Comments at 6 n.10. The Commission should adopt McLeodUSA's proposed interval of three business days for the reasons discussed above. SBC's proposal for McLeodUSA to seek changes in Texas is inappropriate for the additional reason that, as SBC acknowledges, CIA Centrex is offered only in Ameritech states. SBC Reply Comments at 3. Thus, it is unlikely that the Texas collaborative would even address this issue.

<sup>11</sup> McLeodUSA Initial Comments at 5-9.

<sup>12</sup> SBC Reply Comments at 7.

translation work on the switch and other programming changes for associated software features. To minimize the time the end user is actually without service, Ameritech has a CIA group dedicated to the coordination of each McLeodUSA order, which can contain thousands of telephone numbers. This CIA group coordinates across the various network departments to move the end user telephone numbers from the central office equipment to the new Centrex common block. It is this additional process, put in place to insure a smooth migration and to minimize customer service disruption, that causes the provisioning interval of CIA Centrex to differ from the provisioning of other resale POTS.<sup>13</sup>

The above processes apparently apply to both field work and non-field work orders. SBC has provided no basis to conclude otherwise. Accordingly, as discussed in McLeodUSA's initial comments, it does not stand to reason that a parity standard would become applicable simply because an installation requires field work in addition to the above processes.<sup>14</sup> Applying dual parity/benchmark standards in this manner may cause obscurity as to which standard applies to a given order, resulting in inconsistent application of the standards and inaccurate reporting results. Such dual standards also invite gaming behavior by SBC in order to produce the most favorable reporting results.<sup>15</sup> The Commission therefore should adopt McLeodUSA's proposed benchmark intervals for both field work and non-field work orders. In the alternative, if the Commission is not prepared to adopt McLeodUSA's proposed benchmark intervals, then the Commission should defer any disaggregation of CIA Centrex until such time as the parties have completed their pending review of the interim state level intervals.

### **3. SBC Should Not Be Allowed to Use the Six Month Review Process to Force Adoption of Inappropriate Changes in the Performance Requirements**

SBC suggests that the Commission would exceed its authority by adopting McLeodUSA's recommended three- and four-day benchmark intervals for non-field work and field work orders, respectively.<sup>16</sup> SBC argues that adopting these intervals would violate the requirement that any changes be made pursuant to the six-month joint Commission-SBC review process. SBC, however, requested disaggregation of CIA Centrex specifically as part of the six

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<sup>13</sup> *Common Carrier Bureau Seeks Comment on Proposed Change to SBC's Performance Measurements*, Public Notice, DA 01-332 (released Feb. 22, 2001) ("Public Notice"), SBC Request attached thereto ("SBC Request") at 1-2.

<sup>14</sup> McLeodUSA Initial Comments at 8.

<sup>15</sup> See *id.* at 9.

<sup>16</sup> SBC Reply Comments at 7-9.

month review process.<sup>17</sup> Thus, in SBC's view, disaggregating CIA Centrex is consistent with the six month review process only if the end result is to adopt SBC's selective disaggregation proposal; any deviation from SBC's selective proposal necessary to achieve full, accurate reporting results is deemed to violate the six month review process. The Commission should not entertain such a biased, one-sided approach.

Moreover, there is no merit in SBC's argument that it can essentially veto any changes to the performance requirements simply because the six month review is a "joint" process. Under SBC's interpretation, the Commission would have no choice but to accept without modification any selective change in the performance requirements proposed by SBC, regardless of whether the proposed change will result in biased or inaccurate reporting results. A more reasonable interpretation of the Merger Order is that, while the review is a "joint" process, the Commission retains its authority to require modifications such as those proposed by McLeodUSA to ensure that the performance requirements achieve their intended nondiscriminatory purposes. This interpretation is particularly applicable here, where the impact of SBC's proposed change will be upon a single competing carrier, McLeodUSA, and SBC did not consult McLeodUSA in advance regarding how CIA Centrex should be disaggregated at the federal level.

**C. The Commission Should Specify that Disaggregated Sub-Measurements Applicable to CIA Centrex Qualify for Treble Payments Under the Merger Conditions**

In its initial comments, McLeodUSA recommended that the Commission specify that the disaggregated measurements applicable to CIA Centrex constitute "qualifying sub-measurements" for purposes of the treble payment requirement under the Merger Order.<sup>18</sup> SBC opposes this proposal on the ground that CIA Centrex is not currently specified as one of the sub-measurements covered by the treble payment provision.<sup>19</sup> Obviously, CIA Centrex was not previously considered for inclusion in the treble payment provision because CIA Centrex was not disaggregated. The Merger Order, however, specifically contemplates that the list of qualifying sub-measurements may be changed or increased as part of the six month review process from which SBC's disaggregation proposal arose.<sup>20</sup> The inclusion of new qualifying sub-measurements is particularly appropriate where, as here, entirely new sub-measurements are being added to SBC's Carrier-to-Carrier Performance Plan. Moreover, CIA Centrex satisfies the criteria for qualifying sub-measurements as a low volume resold local service as discussed in

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<sup>17</sup> SBC Request at 1, para. 1.

<sup>18</sup> McLeodUSA Initial Comments at 6-7.

<sup>19</sup> SBC Reply Comments at 5-6.

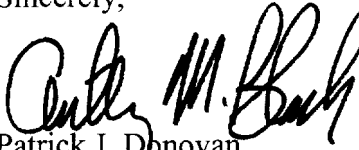
<sup>20</sup> Merger Order, Appendix C, Attachment A at A-5, para. 10.c.

McLeodUSA's initial comments, which SBC did not dispute.<sup>21</sup> Accordingly, McLeodUSA reiterates its recommendation to specify disaggregated CIA Centrex sub-measurements as "qualifying sub-measurements" for purposes of the treble payment provision if the Commission disaggregates CIA Centrex in any manner.

### Conclusion

For the foregoing reasons, McLeodUSA recommends that the Commission disaggregate CIA Centrex in the manner proposed by McLeodUSA for purposes of enforcing the performance requirements adopted in the Merger Order. In the alternative, if the Commission is not inclined at this time to fully disaggregate CIA Centrex in the manner proposed by McLeodUSA, then the Commission should defer any disaggregation until such time as the parties have completed their pending review of the interim state-level disaggregation measures.

Sincerely,



Patrick J. Donovan  
Anthony M. Black

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McLeodUSA Telecommunications Services, Inc.

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<sup>21</sup> See McLeodUSA Initial Comments at 6; Merger Order, Appendix C, Attach. A at A-4, para. 10.